

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1998 OF 2006

Shri Ganesh Shivram Rao		Petitioner
Vs.		
Shri Arun M. Poudwal & Ors.		Respondents

Shri S.M. Oak i/b Ms Nayana V. Thatte
for the Petitioner.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

P.C.:

1. Heard. The petitioner challenges the order dated 7-1-2006 passed in R.C. Suit No.8 of 2003. By the impugned order the trial Court has allowed the application filed by the respondent Nos.2 to 4 to join them as the defendant Nos.2 to 4 in the said suit. The grievance of the petitioner is that earlier the same applicants by their application accompanied by their affidavit had sought their deletion from being parties to the proceedings and accordingly order was passed on 17-9-2003, allowing their application to strike off their names from the proceedings of the said suit. Once the Court had exercised the power to strike off the names of the respondent Nos.2 to 4 under the order dated 17-9-2003, according to the learned Advocate for the petitioner, the Court below could not have again

exercised the power to add those very persons as the defendants and that too, after a period of three years.

2. Undoubtedly, the provisions comprised under Order 1, Rule 10 of the C.P.C. empowers the Court to strike out or add parties either upon or without application of either party and at any stage of the proceedings, depending upon the facts and circumstances of each case. In the case in hand, undoubtedly, by the order dated 17-9-2003 the respondent Nos.2 to 4, who were already the defendant Nos.2 to 4, were allowed to be deleted from the proceedings on the basis of their affidavit. However, bare reading of the said order discloses that the same was passed merely because those respondents had stated in their affidavit that they had no interest in the suit property and without analysing whether their presence was necessary for complete adjudication of the dispute in the matter. When the present application was filed and the same was allowed and the respondent Nos.2 to 4 were ordered to be added as party-defendants, the trial Court has considered as to whether their presence is necessary for complete and effective adjudication of the dispute in question. Undisputedly, the said respondents are the legal representatives of deceased Shivram who was the original tenant in respect of the premises and the suit has been filed for eviction of the tenant from the suit premises. Being so, for effective

and complete adjudication of the matter in issue, the presence of the legal representatives of deceased Shivram is necessary before the Court. Considering the same, the order dated 17-9-2003 was passed merely on the basis of the affidavit and without application of mind, and the said mistake on the part of the Court having been realised, the impugned order having been passed joining the said respondents as the party-defendants, no fault can be found nor it can be said to be either illegal or in improper exercise of jurisdiction. An improper and incorrect order passed by the Court if is recalled by the trial Court in exercise of its inherent power, any interference therein would virtually result in restoring the illegal order passed earlier and therefore it would not be appropriate to exercise writ jurisdiction in such a case. Similar is the case in the matter in hand. Interference in the impugned order would virtually result in restoring an illegal and improper order dated 17-9-2003.

3. In the result, there being no case made out for interference in the impugned order, the petition fails and is hereby rejected.

(R.M.S. Khandeparkar, J.)